

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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TRIAL CHAMBER I

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito
Judge René Blattmann

***SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF THE PROSECUTOR v. THOMAS LUBANGA DYILO***

Public

Redacted Decision on the "Prosecution's Application for Non-Disclosure of Sources contained in the meta-data in compliance with the Consolidated E-Court Protocol" of 16 April 2009

Decision/Order/Judgment to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Other

Trial Chamber I (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, delivers the following decision (“Decision”) on the “Prosecution’s Application for Non-Disclosure of Sources contained in the meta-data in compliance with the Consolidated E-Court Protocol”:¹

I. Background and Submissions

1. On 24 January 2008 the Trial Chamber issued a Decision on the E-Court Protocol, regulating the electronic management of the materials in the case.²
2. On 13 March 2008, the Trial Chamber issued the Second decision on the E-Court Protocol,³ determining that whilst there is a presumption that the information included in the meta-data field will be made available to the defence, when the Chamber authorises non-disclosure of an individual’s identity, this approach is also to apply to the meta-data field.⁴ However, the Chamber held that leave must be sought to implement any other protective measures for information in the meta-data field, as has been the practice hitherto with redactions.⁵
3. On instruction from the Chamber,⁶ on 4 April 2008 the Registry submitted a consolidated version of the “Technical protocol for the provision of evidence, material witness and victim information in electronic form for their presentation during the trial”, having consulted with the parties and participants.⁷

¹ Prosecution’s Application for Non-Disclosure of Sources contained in the meta-data in compliance with the Consolidated E-Court Protocol, 16 April 2009, ICC-01/04-01/06-1820-Conf-Exp; Public Prosecution’s Application for Non-Disclosure of Sources contained in the meta-data in compliance with the Consolidated E-Court Protocol, 14 May 2009, ICC-01/04-01/06-1871.

² Decision on the E-Court Protocol, 24 January 2008, ICC-01/04-01/06-1127.

³ Second decision on the E-Court Protocol, 13 March 2008, ICC-01/04-01/06-1223.

⁴ ICC-01/04-01/06-1223, paragraphs 12 and 13.

⁵ *Ibid.*, paragraph 14.

⁶ *Ibid.*, paragraph 16.

⁷ Consolidated E-Court Protocol, 4 April 2008, ICC-01/04-01/06-1263.

4. On 16 April 2009 the Office of the Prosecutor (“prosecution”) submitted the “Prosecution’s Application for Non-Disclosure of Sources contained in the meta-data in compliance with the Consolidated E-Court Protocol”.⁸ A public version of the application was filed on 14 May 2009.⁹
5. The prosecution seeks permission to redact the identity of five sources for a number of items of disclosed materials, pursuant to Articles 54(3)(f), 64 and 68 of the Rome Statute (“Statute”) and Rules 81(2) and (4) of the Rules of Procedure and Evidence (“Rules”).¹⁰ It submits that these items have been disclosed to the defence in non-redacted form, along with the meta-data required by the E-Court protocol.¹¹ However, the sources of these nine items were referred to by way of court codes rather than by their names in the “Person/Witness from whom the document emanated” (“source”) and in the “chain of custody” meta-data fields, as required by the E-Court Protocol.¹²
6. The five sources that are the subject of this application, and the submissions in support, are as follows:

DRC-OTP-WWWW-0154

The prosecution wishes to redact the name of the intermediary DRC-OTP-WWWW-0154 in the meta-data fields for three items.¹³ It submitted that his ongoing work with the prosecution, and the safety and the security of [REDACTED] in the context of ongoing investigations, will be compromised

⁸ Prosecution’s Application for Non-Disclosure of Sources contained in the meta-data in compliance with the Consolidated E-Court Protocol, 16 April 2009, ICC-01/04-01/06-1820-Conf-Exp.

⁹ Prosecution’s Application for Non-Disclosure of Sources contained in the meta-data in compliance with the Consolidated E-Court Protocol, 14 May 2009, ICC-01/04-01/06-1871.

¹⁰ ICC-01/04-01/06-1871, paragraph 2 ; ICC-01/04-01/06-1820-Conf-Exp, paragraph 2.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ The photograph (DRC-OTP-0077-0033) was disclosed as potentially exculpatory information, the first report as Rule 77 and incriminating information ((DRC-OTP-0077-0304) and the last report (DRC-OTP-0077-0306) as incriminating information.

by disclosure of his identity.¹⁴

DRC-OTP-WWWW-0138

Given the work of DRC-OTP-WWWW-0138, and the obligation to protect the safety and security of [REDACTED] during ongoing investigations, the prosecution seeks leave to redact the name of the intermediary DRC-OTP-WWWW-0138 in the meta-data fields for two items.¹⁵

DRC-OTP-WWWW-0120

Due to potential security risks arising from the personal circumstances of DRC-OTP-WWWW-0120, the prosecution seeks to redact his name in the meta-data fields for three photographs depicting images of dead bodies following the Kobu massacre in February 2003.¹⁶

An individual without a court code

The prosecution applies to redact the name of a prosecution source (to whom a court code has not been assigned) in the meta-data fields relating to a single document, because disclosure of his identity would, first, expose him as occupying this sensitive role (*viz.* as a prosecution source) and, second, it would reveal his sources, thereby prejudicing future investigations and further endangering his security.¹⁷

DRC-OTP-WWWW-0101

The prosecution requests redactions to the identity of DRC-OTP-WWWW-0101, for whom a further application for non-disclosure of identity was

¹⁴ ICC-01/04-01/06-1871, paragraph 6; ICC-01/04-01/06-1820-Conf-Exp, paragraph 6. The photograph (DRC-OTP-0077-0033) was disclosed as potentially exculpatory information, the first report as Rule 77 and incriminating information (DRC-OTP-0077-0304) and the last report (DRC-OTP-0077-0306) as incriminating information.

¹⁵ ICC-01/04-01/06-1871, paragraph 7; ICC-01/04-01/06-1820-Conf-Exp, paragraph 7. The items are a non-ICC statement (DRC-OTP-0126-0216) and an email (DRC-OTP-0126-0257) that have both been disclosed as incriminating evidence.

¹⁶ *Ibid.*, paragraph 8; The three photographs DRC-OTP-0077-0293, DRC-OTP-0077-0294 and DRC-OTP-0077-0295 have all been disclosed as Rule 77 material.

¹⁷ *Ibid.*, paragraph 9. The report (DRC-OTP-0126-0411) was disclosed as incriminating information.

pending before the Chamber at the time of the present application.¹⁸ In that latter application, protective measures were sought, due to the particular personal circumstances of the individual.¹⁹ In the present application, redactions are sought for source-related material within the E-Court meta-data, for several items.²⁰

7. By way of general argument, the prosecution submits, first, the redactions to the source meta-data fields will not hinder the ability of the defence to assess the information in the materials and they do not impact on issues of relevance to the defence in this trial; second, the materials have been disclosed without redactions to the content and any other relevant meta-data; and, third, the redactions are not prejudicial to, or inconsistent with, the rights of the accused.²¹
8. On 19 May 2009, the Chamber ruled that any response was to be filed by 25 May 2009.²² It granted leave to apply for additional time if, on review of the public filing, the deadline was considered unachievable.²³
9. On 26 May 2009, the defence informed the Chamber that it did not intend to respond to the prosecution's application.²⁴

¹⁸ *Ibid.*, paragraph 3 and footnote 5, referring to the prosecution filing ICC-01/04-01/06-1542 of 8 December 2008; The Chamber has in the meantime authorized the non-disclosure of this witness's identity in its Decision on the "Prosecution's Request for Non-Disclosure of the Identity of Eight Individuals providing Rule 77 Information" of 5 December 2008 and Prosecution's "Request for Non-Disclosure of Information in One Witness Statement containing Rule 77 Information" of 12 March 2009, 12 June 2009, ICC-01/04-01/06-1965-Conf-Exp. The public redacted version was issued on 24 June 2009, ICC-01/04-01/06-1980-Anx2.

¹⁹ Attachment A to Prosecution's Request for Non-Disclosure of the Identity of Eight Individuals providing Rule 77 Information, 5 December 2008, ICC-01/04-01/06-1542-Conf-Exp-AnxA, paragraphs 58 and 60.

²⁰ Annex 1 to Prosecution's Application for Non-Disclosure of Sources contained in the meta-data in compliance with the Consolidated E-Court Protocol, 16 April 2009, ICC-01/04-01/06-1820-Conf-Exp-Anx1, page 2. The items are DRC-OTP-0072-0456 (a report disclosed a potentially exculpatory information), DRC-OTP-0072-0471 (audio/video material disclosed as Rule 77 information) and five photographs that were also disclosed as Rule 77 material (DRC-OTP-0072-0474, DRC-OTP-0072-0475, DRC-OTP-0072-0476, DRC-OTP-0072-0477 and DRC-OTP-0072-0478).

²¹ ICC-01/04-01/06-1871, paragraph 4; ICC01/04-01/06-1820-Conf-Exp, paragraph 4.

²² Transcript of hearing on 19 May 2009, ICC-01/04-01/06-T-176-CONF-ENG, page 6, lines 1-3.

²³ *Ibid.*, page 6, lines 3-5.

²⁴ Email communication from the defence to the Trial Chamber through the Legal Adviser to the Trial Division on 26 May 2009.

10. On 12 June 2009, in discharging its protective obligations, the Chamber granted redactions to the identity of DRC-OTP-WWW-0101.²⁵ The Chamber held that the personal circumstances of this individual, as described by the prosecution,²⁶ demonstrated a need for protection that could only be adequately ensured by non-disclosure of his identity.²⁷
11. On 24 June 2009, following a request from the Chamber,²⁸ the prosecution provided further information on the nature, and on the author, of the documents that are the subject of this application.²⁹
12. On 24 July 2009 the prosecution filed the “Prosecution’s Request for Lifting of Redactions to the Identity of One Individual providing Rule 77 Information and Request for Redactions further to Article 54(3)(f) and Rules 81(2) and 81(4)”.³⁰ When dealing with issues arising from the prosecution’s disclosure obligations in the *Katanga and Ngudjolo Chui* case (before Trial Chamber II), the prosecution indicated it had successfully contacted DRC-OTP-WWWW-0101 and obtained his consent for disclosure of his identity in that case, as well as in the present trial.³¹ In the result, it sought leave to lift the redactions to all the identifying information for this individual, whilst simultaneously seeking an order that the defence refrain from disclosing his statement to third parties and from revealing that he provided a statement to the

²⁵ Decision on the “Prosecution’s Request for Non-Disclosure of the Identity of Eight Individuals providing Rule 77 Information” of 5 December 2008 and Prosecution’s “Request for Non-Disclosure of Information in One Witness Statement containing Rule 77 Information” of 12 March 2009, 12 June 2009, ICC-01/04-01/06-1965-Conf-Exp, paragraphs 86, 87, 91; the public redacted version was issued on 24 June 2009, ICC-01/04-01/06-1980-Anx2.

²⁶ ICC-01/04-01/06-1965-Conf-Exp, paragraph 29.

²⁷ *Ibid.*, paragraphs 86, 87, 91.

²⁸ Email communication from the Trial Chamber to the prosecution through the Legal Adviser to the Trial Division on 12 June 2009.

²⁹ Email communication from the prosecution to the Trial Chamber through the Legal Adviser to the Trial Division on 24 June 2009.

³⁰ Prosecution’s Request of Lifting of Redactions to the Identity of One Individual providing Rule 77 Information and Request for Redactions further to Article 54(3)(f) and Rules 81(2) and 81(4), 24 July 2009, ICC-01/04-01/06-2066-Conf; See also Prosecution’s application for variation of protective measures concerning witness 44 and witness 101, 24 July 2009, ICC-01/04-01/06-2067.

³¹ *Ibid.*, paragraph 3.

prosecution.³² The prosecution submitted that if the Trial Chamber grants these requests, the pending application to redact his identity from two e-court meta-data fields (referred to above) will become otiose.³³

13. On 14 September 2009, at the request of the Chamber,³⁴ the prosecution provided further information as regards those decisions of Trial Chamber II that may impact on the prosecution's application for non-disclosure of sources contained in the meta-data.³⁵ As a result, it informed the Chamber that on 16 February 2009 it had requested leave from Trial Chamber II to withhold the identity of DRC-OTP-WWWW-0120 ([REDACTED]) in the *Katanga and Ngudjolo Chui* case;³⁶ on 7 April 2009, Trial Chamber II authorised redactions to the names, the other identifying factors and the whereabouts of the family members of, *inter alia*, DRC-OTP-WWWW-0120 (albeit on a temporary basis).³⁷ On 10 August 2009 the prosecution filed a request to maintain these redactions.³⁸ Additionally, the prosecution filed a request before Trial Chamber II (on 20 March 2009) for permanent non-disclosure of the identity of the intermediary DRC-OTP-WWWW-0154 ([REDACTED]).³⁹ On 8 April 2009, Trial Chamber II authorised non-disclosure of identifying information for this individual, again on a temporary basis.⁴⁰ In its application

³² *Ibid.*, paragraphs 4-6, 10.

³³ *Ibid.*, paragraph 9.

³⁴ Email communication from the Trial Chamber to the prosecution through the Legal Adviser to the Trial Division on 8 September 2009.

³⁵ Prosecution's Information on Filing # 1820 for Non-Disclosure of Meta-data, 14 September 2009, ICC-01/04-01/06-2117-Conf-Exp; a public redacted version was issued the same day, ICC-01/04-01/06-2118.

³⁶ ICC-01/04-01/06-2117-Conf-Exp, paragraphs 6-8, referring to its "Requête de l'Accusation aux fins d'expurgations d'informations dans certains éléments de preuve relevant de l'Article 67(2) ou de la Règle 77, conformément à l'Ordonnance fixant le calendrier de communication des éléments de preuve à charge et à décharge", 16 February 2009, ICC-01/04-01/07-902 and ICC-01/04-01/07-902-Conf-Exp-AnxB.

³⁷ ICC-01/04-01/06-2117-Conf-Exp, paragraph 9, referring to "Décision concernant la requête du Procureur aux fins d'expurgations d'informations relevant de l'article 67-2 du Statut ou la règle 77 du Règlement de procédure et de preuve (ICC-01/04-01/07-902)", 7 April 2009, ICC-01/04-01/07-1359-Conf-Exp (public version of 4 May 2009, ICC-01/04-01/07-1099).

³⁸ ICC-01/04-01/06-2117-Conf-Exp, paragraph 10, referring to "Requête sollicitant le maintien de versions expurgées d'éléments de preuve", 10 August 2009, ICC-01/04-01/07-1359-Conf-Exp.

³⁹ ICC-01/04-01/06-2117-Conf-Exp, paragraphs 11-13, referring to "Requête aux fins d'expurgation d'informations dans certains éléments de preuve relevant de l'Article 67-2 ou de la Règle 77", 20 March 2009, ICC-01/04-01/07-971-Conf-Exp and ICC-01/04-01/07-971-Conf-Exp-AnxF.

⁴⁰ ICC-01/04-01/06-2117-Conf-Exp, paragraph 14, referring to "Décision concernant la requête du Procureur aux fins d'expurgations d'informations relevant de l'article 67-2 du Statut ou la règle 77 du Règlement de

filed on 10 August 2009 before Trial Chamber II, the prosecution applied to maintain redactions to the identities of intermediaries working and residing in Ituri, including this latter individual.⁴¹ Trial Chamber II issued a decision on this application on 22 October 2009 (Décision relative à la levée, au maintien et au prononcé de mesures d'expurgations, ICC-01/04-01/07-1551-Conf-Exp), which was notified to Trial Chamber I on 26 October 2009.

14. The defence informed the Chamber on 15 September 2009 that it did not intend to file observations on the prosecution's further information filed on 14 September 2009.⁴²

II. Applicable law and relevant decisions

15. The following provisions of the Rome Statute framework are relevant in considering this Application:

Article 54 of the Statute

Duties and powers of the Prosecutor with respect to investigations

[...]

3. The Prosecutor may:

[...]

(f) Take necessary measures, or request that necessary measures be taken, to ensure the confidentiality of information, the protection of any person or the preservation of evidence.

Article 64 of the Statute

Functions and powers of the Trial Chamber

[...]

6. In performing its functions prior to trial or during the course of a trial, the Trial Chamber may, as necessary:

[...]

(e) Provide for the protection of the accused, witnesses and victims.

(f) Rule on any other relevant matters.

[...]

procédure et de preuve (ICC-01/04-01/07-971)", 8 April 2009, ICC-01/04-01/07-1042-Conf-Exp (public version of 4 May 2009, ICC-01/04-01/07-1096).

⁴¹ ICC-01/04-01/06-2117-Conf-Exp, paragraph 15, referring to ICC-01/04-01/07-1359-Conf-Exp.

⁴² Email communication from the defence to the Trial Chamber through the Legal Adviser to the Trial Division on 15 September 2009.

Article 68 of the Statute

Protection of the victims and witnesses and their participation in the proceedings

The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

[...]

Rule 81 of the Rules

Restrictions on disclosure

[...]

2. Where material or information is in the possession or control of the Prosecutor which must be disclosed in accordance with the Statute, but disclosure may prejudice further or ongoing investigations, the Prosecutor may apply to the Chamber dealing with the matter for a ruling as to whether the material or information must be disclosed to the defence. The matter shall be heard on an ex parte basis by the Chamber. However, the Prosecutor may not introduce such material or information into evidence during the confirmation hearing or the trial without adequate prior disclosure to the accused.

[...]

4. The Chamber dealing with the matter shall, on its own motion or at the request of the Prosecutor, the accused or any State, take the necessary steps to ensure the confidentiality of information, in accordance with articles 54, 72 and 93, and, in accordance with article 68, to protect the safety of witnesses and victims and members of their families, including by authorizing the non-disclosure of their identity prior to the commencement of the trial.

[...]

Regulation 42 of the Regulations of the Court ("Regulations")

Application and variation of protective measures

1. Protective measures once ordered in any proceedings in respect of a victim or witness shall continue to have full force and effect in relation to any other proceedings before the Court and shall continue after proceedings have been concluded, subject to revision by a Chamber.

2. When the Prosecutor discharges disclosure obligations in subsequent proceedings, he or she shall respect the protective measures as previously ordered by a Chamber and shall inform the defence to whom the disclosure is being made of the nature of these protective measures.

3. Any application to vary a protective measure shall first be made to the Chamber which issued the order. If that Chamber is no longer seized of the proceedings in which the protective measure was ordered, application may be made to the Chamber before which a variation of the protective measure is being requested. That Chamber shall obtain all relevant information from the proceedings in which the protective measure was first ordered.

4. Before making a determination under sub-regulation 3, the Chamber shall seek to obtain, whenever possible, the consent of the person in respect of whom the application to rescind, vary or augment protective measures has been made.

16. In the *Katanga and Ngudjolo Chui* case the Appeals Chamber held that that “persons other than witnesses, victims and members of their families, may, at this stage of the proceedings, be protected through the non-disclosure of their identities by analogy with other provisions of the Statute and the Rules. The aim is to secure protection of individuals at risk. Thus, by necessary implication, rule 81(4) should be read to include the words “persons at risk on account of the activities of the Court” so as to reflect the intention of the States that adopted the Statute and the Rules of Procedure and Evidence, as expressed in article 54(3)(f) of the Statute and in other parts of the Statute and the Rules, to protect people at risk.”⁴³ The Appeals Chamber emphasised that non-disclosure of information for the protection of persons at risk on account of the activities of the Court requires “a careful assessment [...] on a case by case basis, with specific regard to the rights of the [accused].”⁴⁴
17. In the Chamber’s assessment, this decision of the Appeals Chamber extending protection beyond the groups expressly provided for in Rule 81(4) – i.e. witnesses, victims and members of their families – to “*other persons at risk on account of the activities of the Court*” is to be applied generally during the trial proceedings. Therefore, the Trial Chamber’s responsibility under Article 64(6)(e) to “[p]rovide for the protection of the accused, witnesses and victims” includes providing protection for all those at risk in the context of this trial on account of the activities of the Court.⁴⁵
18. The Trial Chamber has previously authorised permanent redactions to the names of those who have been referred to as “third parties”, intermediaries,

⁴³ Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled “First Decision on the Prosecution Request for Authorisation to Redact Witness Statements”, 13 May 2008, ICC-01/04-01/07-475, paragraph 56.

⁴⁴ *Ibid.*, paragraph 2.

⁴⁵ Decision on the “Prosecution’s Request for Non-Disclosure of the Identity of Twenty-Five Individuals providing *Tu Quoque* Information” of 5 December 2008, 9 April 2009, ICC-01/04-01/06-1814-Conf, paragraph 34.

sources or NGOs (together with their field staff) when, *inter alia*, the information was irrelevant to the known issues in the case, so long as this course did not render the document in any way unintelligible or unusable.⁴⁶

III. Analysis

19. In the light of the substance and the detail of this application, the Trial Chamber considers that it has been properly submitted on an *ex parte* basis. The Chamber also notes that versions of the application and the updates have been filed publicly.

DRC-OTP-WWWW-0154

20. This individual is not the author of the two reports relevant to this issue,⁴⁷ but instead he simply provided them to the prosecution. The latter submitted that there is no evidence in its possession to suggest that DRC-OTP-WWWW-0154 ([REDACTED]), who **provided** photograph DRC-OTP-0077-0033 to the prosecution, also **took** the original.⁴⁸ As described by the prosecution, it shows a military commander, who appears to be [REDACTED], surrounded by young soldiers in the back of a white truck.⁴⁹ There is no information as to the date the photograph was taken. It was disclosed as potentially exculpatory material, falling into the "*tu quoque*" category.⁵⁰

21. Protective measures were previously granted for DRC-OTP-WWWW-0154 by

⁴⁶ Transcript of hearing on 13 December 2007, ICC-01/04-01/06-T-65-ENG, page 3; Order granting prosecution's application for non-disclosure of information provided by a witness, 31 January 2008, ICC-01/04-01/06-1146-Conf-Exp, and (confidential redacted version) ICC-01/04-01/06-1221-Conf-Anx1, paragraph 8; Public Redacted Decision on the "Prosecution's Request for Non-Disclosure of the Identity of Twenty-Five Individuals providing *Tu Quoque* Information" of 5 December 2008, 2 June 2009, ICC-01/04-01/06-1924-Anx2, paragraph 34.

⁴⁷ DRC-OTP-0077-0304 and DRC-OTP-0077-0306.

⁴⁸ Email communication from the prosecution to the Trial Chamber through the Legal Adviser to the Trial Division on 24 June 2009.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

Trial Chamber II, on 8 April 2009;⁵¹ Trial Chamber II authorized the temporary non-disclosure of this individual's name in an Investigator's Note relating to Witness 300. On 22 October 2009, Trial Chamber II authorized the non-disclosure of this individual's name in the Investigator's Note relating to Witness 300 for the duration of the trial proceedings.⁵²

22. Regulation 42(1) of the Regulations stipulates that protective measures, once granted, shall continue to have full force and effect in relation to any other proceedings before the Court, subject to revision by a Chamber. Trial Chamber I has previously decided that whilst there is a presumption that information included in the meta-data field shall be made available to the defence, where the Chamber has authorised non-disclosure of an individual's identity, this is to apply to the meta-data fields.⁵³
23. As this person is not the author of the two reports, the Chamber is persuaded that non-disclosure of his name in the meta-data fields relating to the source and the chain of custody of these two documents will not cause any identifiable prejudice to the accused: his identity is irrelevant to any known issue in the case. Therefore, under Regulation 42 of the Regulations, the protective measure of non-disclosure of this individual's identity is to be maintained.
24. In accordance with Regulation 42 of the Regulations and subject to any variation by Trial Chamber II, this individual's name is not to be disclosed in the source and custody meta-data fields relating to the photograph. However, the Chamber will revisit this issue if the defence seeks hereafter to obtain additional information about this item.

⁵¹ See paragraph 13 of the procedural history above and the "Décision concernant la requête du Procureur aux fins d'expurgations d'informations relevant de l'article 67-2 du Statut ou la règle 77 du Règlement de procédure et de preuve (ICC-01/04-01/07-971)", 8 April 2009, ICC-01/04-01/07-1042-Conf-Exp. A public redacted version was issued on 4 May 2009, ICC-01/04-01/07-1096.

⁵² ICC-01/04-01/07-1551-Conf-Exp, paragraph 61 and page 39.

⁵³ ICC-01/04-01/06-1223, paragraphs 12 and 13.

DRC-OTP-WWWW-0120

25. The prosecution suggested that DRC-OTP-WWWW-0120, [REDACTED], did not produce the photographs DRC-OTP-0077-0293, DRC-OTP-0077-0294 and DRC-OTP-0077-0295 that have been disclosed as Rule 77 material.⁵⁴ The Chamber notes he is not a trial witness, [REDACTED].⁵⁵ DRC-OTP-WWWW-0024 provided information about these photographs, indicating that they were taken by a young photographer from the Ngabulo village in the collectivité Walendu-Djatsi, whose name he has forgotten.⁵⁶ Witness DRC-OTP-WWWW-0024 further suggests that the photographer came to Bunia after the work of the Ituri Pacification Commission in April 2003 and asked him [REDACTED] to help develop the film.⁵⁷ This information was disclosed in the witness statement made available to the defence, thus enabling it to investigate these issues. [REDACTED]

26. Trial Chamber II has authorized non-disclosure of the identity of this individual in a document relating to [REDACTED] in its decision of 7 April 2009.⁵⁸ As already set out as regards DRC-OTP-WWWW-0154, any protective measures imposed by a chamber will generally continue to have effect in accordance with Regulation 42 of the Regulations unless revised by a Chamber, and in the result this individual's name is not to be disclosed in the meta-data fields. The Chamber has, in any event, concluded that non-disclosure of this information will not cause any prejudice to the rights of the accused because the defence has been provided with all the material information relating to these pictures. The identity of DRC-OTP-WWWW-0120 is not relevant to any known issue in the case.

⁵⁴ Email communication from the prosecution to the Trial Chamber through the Legal Adviser to the Trial Division on 24 June 2009.

⁵⁵ [REDACTED].

⁵⁶ Witness statement from witness DRC-OTP-WWWW-0024, DRC-OTP-0126-0189, paragraph 24.

⁵⁷ *Ibid.*

⁵⁸ See paragraph 13 of the procedural history above and "Décision concernant la requête du Procureur aux fins d'expurgations d'informations relevant de l'article 67-2 du Statut ou la règle 77 du Règlement de procédure et de preuve (ICC-01/04-01/07-902)", 7 April 2009, ICC-01/04-01/07-1036-Conf-Exp.

The individual without a court code

27. As regards [REDACTED], to whom a court code has not been assigned,⁵⁹ he was not the author of the document that he provided to the prosecution. This is an [REDACTED] document from January 2003 entitled [REDACTED], and he is not listed as one of those adopting the manifest.

28. [REDACTED] is a local [REDACTED] for [REDACTED] whose work often leads him to the Ituri District, where [REDACTED] live.⁶⁰ The Chamber previously authorized non-disclosure of his identity in relation to another document,⁶¹ and, as set out above, whilst there is a presumption that the information included in the meta-data field shall be made available to the defence, when the Chamber has authorised non-disclosure of an individual's identity this is to be applied to the meta-data field,⁶² resulting in the automatic non-disclosure of identity in the meta-data fields specified by the prosecution.

29. It is apparently irrelevant to any known issue in this case that this individual provided the document in issue to the prosecution, and since it has been furnished to the defence in its entirety, maintaining the existing protective measures will not cause any prejudice to the accused.

DRC-OTP-WWWW-0138

30. DRC-OTP-WWWW-0138, [REDACTED], is not the author of the relevant email provided to the prosecution, and the Chamber notes that the name of the person who supplied the information on the human rights violations set out in document DRC-OTP-0126-0216 has not been redacted. In the result, all of the relevant detail has been made available to the defence. Although the

⁵⁹ Sometimes also referred to as [REDACTED].

⁶⁰ ICC-01/04-01/06-1871, paragraph 9.

⁶¹ Annex to "Decision on the "Prosecution's Request for Non-Disclosure of the Identity of Twenty-Five Individuals providing Tu Quoque Information" of 5 December 2008", 9 April, 2009, ICC-01/04-01/06-1814-Conf-Exp-Anx, pages 36-37.

⁶² ICC-01/04-01/06-1223, paragraphs 12 and 13.

information was originally disclosed as incriminatory material, this individual, whose identity the prosecution seeks to redact in the meta-data fields, is not a trial witness.

31. He continues to serve as an intermediary for the prosecution, and it is submitted that he is the only point of contact for (non-trial) witness DRC-OTP-WWWW-0114, who lives in a remote area not covered by the IRS and who cannot be contacted via a cell phone. Disclosure of this individual's name would compromise his work and his security, the security of [REDACTED], and the ongoing investigations.
32. Given, first, that the suggested protective measures are clearly necessary; second, other effective means are not available; and, third, the defence has been provided with all the relevant information in non-redacted form, the Chamber authorises redactions to his identity in the meta-data fields of the two documents.

DRC-OTP-WWWW-0101

33. Since the current application as regards this individual is otiose if the Chamber grants the request to lift the redactions that have been previously authorized, the Chamber will address each of the requests regarding DRC-OTP-WWWW-0101, [REDACTED], in a separate and comprehensive decision.

IV. Conclusion

34. The Chamber authorises the non-disclosure of the identity of DRC-OTP-WWWW-0138 in the meta-data fields as requested by the prosecution.
35. The Chamber does not seek to disturb the protective measures granted by Trial Chamber II for DRC-OTP-WWWW-154 and DRC-OTP-WWWW-120

under Regulation 42 of the Regulations, and their identities are not to be disclosed in the meta-data fields specified by the prosecution. However, if the defence seeks further information material to photograph DRC-OTP-0077-0033, or any other relevant document that is the subject of this Decision, the issue may be raised hereafter.

36. The protective measures currently in place for the individual not bearing a court code are not to be varied, and the identity of this individual is not to be disclosed in the meta-data fields specified by the prosecution.

37. The requests relating to DRC-OTP-WWWW-0101 will be dealt with in a separate decision.

Done in both English and French, the English version being authoritative.



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 11 November 2009

At The Hague, The Netherlands